

# DAMAGE CLAIMS FOR IMPROPER PRISON CONDITIONS: THE JURISPRUDENCE OF THE SUPREME ADMINISTRATIVE COURT OF LITHUANIA FROM THE PERSPECTIVE OF THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

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## Abstract

**Purpose** - article aims to analyse case law of the Supreme administrative court of Lithuania (hereinafter - Supreme administrative court) regarding claims of improper detention conditions from the perspective of Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - ECHR). Thus, this article provides an analysis of criteria applied by the European Court of Human Rights (hereinafter - ECtHR) for determining the existence of an infringement of article 3 of ECHR, prohibiting torture and inhuman or degrading treatment and case law of the Supreme administrative court concerning improper detention conditions in light of the case law of ECtHR. Finally, the author of this article studies criteria for awarding effective remedy.

**Design/methodology/approach** - linguistic, historical, analytic, systematic, comparative methods are applied in the research.

**Findings** - Even though Supreme administrative court extensively relies on the case law of ECtHR, usually it finds that national legal regulation is infringed and does not constitute an infringement of ECHR. ECtHR constitutes an infringement on a case by case basis, taking into account the cumulative effect of detention conditions. In cases of an infringement Supreme administrative court may award monetary compensation or constitute that finding of infringement is in itself a just satisfaction. Supreme administrative court considers a time the victim spent subjected to improper conditions, the entirety of infringements, the level of suffering, the intention for harm of the institution, the economic situation in the country relevant criteria for determining an effective remedy. Supreme administrative court usually concludes that finding of infringement is just satisfaction in cases of minor infringements. Nevertheless, case law regarding lack of privacy using sanitary facilities is still not consistent as in some cases

Supreme administrative court awards monetary compensation while in other cases Supreme administrative court refuses to award monetary compensation considering that finding of infringement is just satisfaction. However, analysis of the jurisprudence of ECtHR reveals that even though administrative courts of Lithuania find that detention conditions were not adequate and thus infringe rights protected by ECHR or national law, remedies granted by the courts are not always sufficient - on some occasions the remedies granted by ECtHR for the same infringements are far higher than those granted by national courts. ECtHR stipulates that under the principle of subsidiarity states parties of ECHR are primarily responsible for ensuring ECHR rights. Nevertheless, institutions or national courts need to find an infringement of ECHR and award remedy which would be similar to remedy which would be awarded by ECtHR in a similar case. Nonetheless, ECtHR many times concluded that remedies granted by Supreme administrative court are not sufficient. On the other hand, for the remedy itself, it is difficult to provide a clear standard, what could be considered as an adequate award as it determined by individual circumstances.

**Research limitations/implications** - research is limited to the analysis of the jurisprudence of the Supreme administrative court and ECtHR. Thus, the practice of other courts and bodies of other human rights treaties is not analysed. This research is not intended to be an in-depth analysis of Lithuanian legal regulation of detention conditions since the aim of this article is to examine jurisprudence of the Supreme administrative court from the perspective of ECtHR case law and provide analysis in what cases remedies granted by Supreme administrative court are not sufficient.

**Practical implications** - the results of the research reveal the criteria applicable in the jurisprudence of the Supreme administrative court for finding infringement of article 3 of ECHR and standards for awarding effective remedy.

**Originality/Value** - researchers of the Law institute of Lithuania researched detention conditions (Bieliūnienė, 2014; Wolfgan, 2017; Sakalauskas, 2015). However, research of the Law institute of Lithuania is limited to the national and international standards for conditions of detention. Thus, researchers did not analyse jurisprudence regarding the awards in cases of improper detention conditions. Since there is no research concerning the alignment between remedies granted by ECtHR and the Supreme administrative court, this article would be valuable for both legal practitioners and victims of infringement.

**Keywords:** detention conditions, torture, inhuman or degrading treatment or punishment, European Convention on Human Rights, subsidiarity, effective remedy, non-pecuniary damage, principle of subsidiarity.

**Research type:** research paper.